



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION SERVICE PROVIDER TAX INSTRUCTIONAL BULLETIN 55

Service Provider Tax

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Taxpayers are solely responsible for reviewing and complying with Maine statutory laws. Portions of the Service Provider Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

1. SERVICES TAXABLE; RATE

The Service Provider Tax rate is the same as the Maine general sales tax rate (5%). The Maine Service Provider Tax is imposed upon the providers of the following services provided in Maine:

- extended cable and satellite television services;
- fabrication services;
- rental of video media and video equipment;
- rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement;
- telecommunications services and ancillary services;
- installation, maintenance or repair of telecommunications equipment;
- private nonmedical institution services;
- community support services for persons with mental health diagnoses;
- community support services for persons with mental retardation or autism; and
- home support services.

The final four services on the list above are taxable only when provided by a designated provider under contract with the Maine Department of Health and Human Services (“DHHS”).

Unlike the sales tax, the Service Provider Tax is not levied on the consumer, but is instead imposed upon the provider (seller). The law does allow the provider to pass the tax on to the consumer, but only if it is separately stated and identified as a “service provider tax”.

2. DESCRIPTION OF TAXABLE SERVICES; FILING OF RETURNS

For the six services discussed below, most taxpayers will be filing both a Maine Sales/Use Tax return and a Maine Service Provider Tax return. When calculating these returns, taxpayers should include all services subject to the service provider tax, and reported on the service provider tax return, as a part of “Gross Sales” and “Exempt Sales” on lines 1 and 2 of their Sales/Use Tax return. This ensures that all services being offered by a business are included in its total gross sales reported on the sales tax return. Since the issuance of Maine Resale Certificates is based upon the “Gross Sales” line of the sales tax return, taxpayers should use this method of reporting.

A. EXTENDED CABLE AND SATELLITE TELEVISION SERVICES

The tax on cable and satellite television services applies only to charges for services over and above the most basic level programming available to consumers (the service package offering the fewest number of channels). Taxable services include, but are not limited to, extended packages containing additional channels, movie or sports channels, pay-per-view programming, connection fees to additional sets and rental fees for use of special equipment such as converter boxes.

B. FABRICATION SERVICES

“Fabrication services” means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. Fabrication services, as defined by the Maine statute, may be distinguished from manufacturing by identifying the person who furnishes the raw materials to be used in production. In order for a service to be considered “fabrication”, the raw materials must be supplied by the purchaser of the services (the customer) as opposed to the supplier of the services (the fabricator). If the purchaser of the service, or a third party at the direction of the purchaser, supplies the raw materials upon which the fabrication service will occur, then these services qualify as fabrication services and are subject to the service provider tax. See Instructional Bulletin 46 for more detailed information.

C. RENTAL OF VIDEO MEDIA AND VIDEO EQUIPMENT

“Video media” includes video tapes (VHS), video games, and digital video discs (DVDs). “Video equipment” includes VCRs, DVD players/recorders, camcorders and video game equipment such as Sony Playstation and Xbox. LCD projectors are not considered video equipment. Late fees and the sale of movie passes are also taxable as they represent payment for rentals of video media or equipment rentals. Damage protection fees are not subject to tax provided they are optional to the customer and separately stated.

D. RENTAL OF FURNITURE, AUDIO MEDIA AND AUDIO EQUIPMENT

The Service Provider Tax applies to the rental of furniture, audio media and audio equipment but only when such rentals are made by “rent-to-own” businesses that are regulated by Title 9-A, section 11-105. Furniture is defined by statute (see Attachment 1) and includes home electronic devices. The tax applies to each rental payment as it is made.

E. TELECOMMUNICATIONS SERVICES & ANCILLARY SERVICES

“Telecommunications services” includes all 2-way interactive communications, including, but not limited to voice, data, audio or video transmissions that begin and end within the State of Maine (intrastate service). Interstate service and access services are not subject to the Service Provider Tax. “Telecommunications services” includes internet telephone service (voice over internet protocol or “VOIP”), directory assistance, voice mail services, and conference bridging services. “Telecommunications services” does not include internet access services, directory advertising services, charges for leasing telecommunications equipment, or prepaid calling services. Mobile telecommunications

services are taxable, but only with respect to customers whose place of primary use is within the State of Maine. Taxable ancillary services include detailed telecommunications billing service, directory assistance, and voice mail service.

F. INSTALLATION, MAINTENANCE & REPAIR OF TELECOMMUNICATIONS EQUIPMENT

Labor charges for the installation, maintenance or repair of telecommunications equipment are subject to the Service Provider Tax. This includes installation and repair of telephone systems, facsimile machines, two-way radios, and transmission media such as copper wire, coaxial cable and optical fiber lines (but does not include transmission media designed and primarily used to transmit electricity). “Telecommunications equipment” does not include computers or most computer equipment, but does include modems and other computer components used directly and primarily as a two-way interactive communications device capable of exchanging audio, video, data or textual information.

The Service Provider Tax as it applies to telecommunications equipment affects not only telecommunications companies, but also electricians and other contractors that install telecommunication wiring. Since copper wire, coaxial cable and optical fiber are all capable of being used in the provision of two-way interactive communications, the installation contractor must always accrue the Maine Service Provider Tax on the installation labor charges for these products.

For multi-functioning machines, only the labor to install, maintain or repair the telecommunications equipment portion of the item is subject to the Service Provider Tax. For example, with a fax/printer/copier combined unit, only the labor charge for installing, maintaining or repairing the modem is subject to tax.

3. SERVICES ADMINISTERED BY DEPT OF HEALTH AND HUMAN SERVICES

The taxable services discussed below all require either licensing by DHHS or a contract with DHHS. If you offer these services but are not licensed by or under contract with DHHS, then such service would not be subject to the Service Provider Tax. These services are taxed based on the number of billing units billed out for the reporting period multiplied by the rate assigned to the provider by DHHS. (Note: This rate paid by DHHS includes the 5% allowed for reimbursement of this tax.) The “Gross Services” line on the Service Provider Tax return should not include the amount paid by DHHS for the tax portion of the services provided. The sum of the “Taxable Services” and “Tax Due” lines of the Service Provider Tax return should equal the amount of reimbursement received from DHHS for providing these services.

A. PRIVATE NONMEDICAL INSTITUTION SERVICES

Private nonmedical institution services means services, including food, shelter and treatment, that are provided by a private nonmedical institution. “Private nonmedical institution” means a person licensed by DHHS to provide care to four or more MaineCare-eligible and other residents in single or multiple facilities under a written agreement with DHHS. This does not include a health insurance organization, hospital, nursing home or community health care center.

B. COMMUNITY SUPPORT SERVICES FOR PERSONS WITH MENTAL HEALTH DIAGNOSES

These are community support services offered by a provider that is licensed by DHHS to provide rehabilitative services for adults or emancipated children with mental health diagnoses pursuant to an individual support plan that promotes a person's recovery and integration of the person into the community and that sustain the person's current living situation or another living situation of the person's choice.

C. COMMUNITY SUPPORT SERVICES FOR PERSONS WITH MENTAL RETARDATION OR AUTISM

These are community support services (A) that are provided by community-based agencies to children or adults with mental retardation or autism and include assistance with the acquisition, retention or improvement of self-help, socialization and adaptive living skills; and (B) that take place in a nonresidential setting separate from the home or facility in which the individual resides, except when a physician has ordered that such services be provided in the individual's home, and focus on enabling the individual to attain or maintain maximum functionality.

D. HOME SUPPORT SERVICES

Home support services means services provided to adults with mental retardation or autism, including direct assistance with eating, bathing, dressing, personal hygiene and other activities of daily living. Such services may include assistance with instrumental activities of daily living such as assistance with the preparation of meals, but not the cost of the meals. They may also include assistance with housekeeping chores that are incidental to the care furnished, or essential to the health and welfare of the recipient of the services. The provider may or may not be related to the individual receiving assistance, but the services may not be provided by the recipient's spouse and may not be provided in the same setting where residential training is provided.

3. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Service Provider Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
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ATTACHMENT 1
Excerpts taken from Title 36 MRSA Chapter 358
Service Provider Tax

§2551 Definitions

1-A. Community support services for persons with mental health diagnoses.

“Community support services for persons with mental health diagnoses” means rehabilitative services provided to adults at least 18 years of age or to emancipated children that are provided in the context of a supportive relationship pursuant to an individual support plan that promotes a person’s recovery and integration of the person into the community and that sustain the person in that person’s current living situation or another living situation of that person’s choice. “Community support services for persons with mental health diagnoses” includes only those services provided by a designated community support services provider licensed by and operating under a contract with the Department of Health and Human Services for such services, whether the provider is reimbursed through participation in the MaineCare program or with state grant funds. “Community support services for persons with mental health diagnoses” includes only those services provided to persons with mental health diagnoses.

1-B. Community support services for persons with mental retardation or autism.

“Community support services for persons with mental retardation or autism” means services:

- A. That are provided by community-based agencies to children or adults with mental retardation or autism and include assistance with the acquisition, retention or improvement of self-help, socialization and adaptive living skills; and
- B. That take place in a nonresidential setting separate from the home or facility in which the child or adult resides, except when a physician has ordered that such services be provided in the child’s or adult’s home, and focus on enabling the child or adult to attain or maintain maximum functional levels.

“Community support services for persons with mental retardation or autism” includes only those services provided by designated agencies under a contract with the Department of Health and Human Services.

2. Extended cable and satellite television services. “Extended cable and satellite television services” means all cable and satellite television service that is in addition to the minimum service that can be purchased from a cable or satellite television supplier, including the use of associated equipment for which a charge is made. It does not include installation of the associated equipment for which a separate charge is levied.

3. Fabrication services. "Fabrication services" means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. "Fabrication services" does not include the production of tangible personal property if a sale to the consumer of the tangible personal property so produced would be exempt or otherwise not subject to tax under Part 3.

4. Furniture. "Furniture" means movable items that are intended to make a room or establishment useful for human habitation.

A. "Furniture" includes:

- (1) Living room furniture, including, but not limited to, sofas, love seats, loungers, recliners, chairs, end tables, coffee tables, curio cabinets, home entertainment centers, book shelves and floor and table lamps;
- (2) Bedroom furniture, including, but not limited to, headboards, footboards, bed frames, mattresses, box springs, dressers, chests of drawers, mirrors, armoires, nightstands, bunk beds, roll-away beds and chests;
- (3) Baby furniture, including, but not limited to, cribs, dressers and changing tables;
- (4) Dining room furniture, including, but not limited to, tables, chairs, dinette sets, hutches and dry sinks;
- (5) Patio and outdoor furniture, including, but not limited to, tables, chairs, umbrellas, porch swings and gliders;
- (6) Office furniture, including, but not limited to, desks, chairs, tables, workstations, movable partitions, shelving, file cabinets, coat racks and couches; and
- (7) Home electronic devices, including home appliances, home computers, televisions, stereos and radios.

B. "Furniture" does not include:

- (1) Items that are affixed to real property such as sinks, toilets, built-in cabinets or light fixtures; or
- (2) Furnishings such as carpeting, artwork, draperies or blinds.

7-B. Home support services. "Home support services" means services provided to adults with mental retardation or autism, including direct assistance with eating, bathing, dressing, personal hygiene and other activities of daily living. These services include only those services provided by designated agencies under a contract with the Department of Health and Human Services and:

- A. May include assistance with instrumental activities of daily living such as assistance with the preparation of meals, but does not include the cost of the meals themselves;
- B. If specified in the adult's care plan, may include such housekeeping chores as bed making, dusting and vacuuming that are incidental to the care furnished, or are essential to the health and welfare of the adult; and
- C. May be provided by a provider unrelated to the adult or by an adult relative other than an adult recipient's spouse, but may not be provided in the same setting where residential training is provided.

8. Place of primary use. "Place of primary use" means the street address representative of where a customer's use of mobile telecommunications services primarily occurs, which must be either the residential street address or the primary business street address of the customer and must also be located within the licensed service area of the home service provider. For purposes of determining the place of primary use, "customer" means the person or entity that contracts

with the home service provider for mobile telecommunications services or, if the end user of such services is not the contracting party, the person that is the end user of such services. The term "customer" does not include a reseller of mobile telecommunications services or a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

10. Private nonmedical institution. "Private nonmedical institution" means a person licensed by the Department of Health and Human Services to provide private nonmedical institution services to 4 or more MaineCare-eligible and other residents in single or multiple facilities under a written agreement with the Department of Health and Human Services. "Private nonmedical institution" does not include a health insurance organization, hospital, nursing home or community health care center.

11. Private nonmedical institution services. "Private nonmedical institution services" means services, including food, shelter and treatment, that are provided by a private nonmedical institution.

15. Sale price. "Sale price" means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the cost of materials used, labor or service cost, interest, losses and any other expense of the seller. "Sale price" includes any consideration for services that are a part of a sale. "Sale price" does not include:

- A. Discounts allowed and taken on sales;
- B. Allowances in cash or by credit made upon the return of services pursuant to warranty;
- C. The price of services rejected by customers when the full sale price is refunded either in cash or by credit;
- D. The amount of any tax imposed by the United States or the State on or with respect to the sale of a service, whether imposed upon the seller or the consumer; or
- E. The cost of transportation from the service provider's place of business or other point from which shipment is made directly to the purchaser, as long as those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States Postal Service.

17. Service provider. "Service provider" means a person who sells one or more of the services listed in section 2552.

19. Telecommunications equipment. "Telecommunications equipment" means any 2-way interactive communications device, system or process for transmitting or receiving signals and capable of exchanging audio, video, data or textual information. "Telecommunications equipment" includes all transmission media that are used or capable of being used in the provision of 2-way interactive communications, including, without limitation, copper wire, coaxial cable and optical fiber, except those transmission media designed and primarily used to transmit electricity. "Telecommunications equipment" does not include computers, except those components of a computer used primarily and directly as a 2-way interactive communications device capable of exchanging audio, video, data or textual information.

20-A. Telecommunications services. "Telecommunications services" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point or between or among points. "Telecommunications services" includes transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether the service is referred to as "Voice over Internet Protocol" services or is classified by the Federal Communications Commission as enhanced or value added. "Telecommunications services" does not include:

- A. Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser when the purchaser's primary purpose for the underlying transaction is to obtain the processed data or information;
- B. Installation or maintenance of wiring or equipment on a customer's premises;
- C. Tangible personal property;
- D. Advertising, including, but not limited to, directory advertising;
- E. Billing and collection services provided to 3rd parties;
- F. Internet access service;
- G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of those services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service as defined in 47 United States Code, Section 522(6) and audio and video programming services delivered by commercial mobile radio service providers as defined in 47 Code of Federal Regulations, Section 20.3;
- H. Ancillary services; or
- I. Digital products delivered electronically, including, but not limited to, software, music, video, reading materials or ringtones.

20-B. Vertical service. "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services and offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. "Vertical service" includes conference bridging service.

21-A. Voice mail service. "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. "Voice mail service" does not include a vertical service that the customer may be required to have in order to use the voice mail service.

21. Video media; video equipment. "Video media" means prerecorded magnetic tapes used for noncommercial playback of images and sound on video equipment, and other electronic audio and video media that provide for noncommercial interactive utilization by a person or persons, including digital video discs. "Video equipment" means equipment used to play video media, equipment used for recording images and sound for subsequent noncommercial playback and equipment used for noncommercial interactive utilization of electronic audio and video media.

36 § 2552. Tax imposed

1. Rate. A tax at the rate of 5% is imposed on the value of the following services sold in this State:

- A. Extended cable and satellite television services;
- B. Fabrication services;
- C. Rental of video media and video equipment;
- D. Rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105;
- E. Telecommunications services;
- F. The installation, maintenance or repair of telecommunications equipment;
- G. Private nonmedical institution services;
- H. Community support services for persons with mental health diagnoses;
- I. Community support services for persons with mental retardation or autism;
- J. Home support services; and
- K. Ancillary services.

§2557. Exemptions

The tax imposed by this chapter does not apply in connection with:

32. Prepaid calling service. Sales of prepaid calling service;

33. International telecommunications service. Sales of international telecommunications service; and

34. Interstate telecommunications service. Sales of interstate telecommunications service.